

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON

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:  
UNITED STATES OF AMERICA, :  
:  
v. : CRIMINAL NO. 2:08-00105  
:  
WILLIAM CHESTER, JR., : FEBRUARY 10, 2012  
:  
Defendant. :  
-----x

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE JOHN T. COPENHAVER, JR.  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE UNITED STATES: AUSA LISA JOHNSTON  
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FOR THE DEFENDANT: AFPD LEX A. COLEMAN  
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These proceedings were reported with use of a stenographic machine and transcribed with use of computer-aided transcription.

P R O C E E D I N G S

8:34 a.m.

THE CLERK: The case before the court is the *United States of America versus William Samuel Chester, Jr.*, Criminal Number 2:08-00105. Would counsel note their appearance for the record, please.

MS. JOHNSTON: Lisa Johnston on behalf of the United States.

MR. COLEMAN: Lex Coleman on behalf of William Chester, Your Honor, who is seated in the courtroom to my right.

THE COURT: Thank you.

THE CLERK: Will the defendant please stand to be sworn and raise your right hand.

(The defendant was sworn.)

THE COURT: First of all, the court expresses thanks to Mr. Coleman who has been on some substantial stress this week, as well as Mr. Chester who has been on particular stress of his own, as the court understands it, for being present to conclude this matter today.

The court first notes that in response to the Court of Appeals order, the court has conducted, as the parties know, a number of hearings in the matter and has considered the case law development since the Court of Appeals opinion and has prepared an opinion for entry today, a copy of which counsel have received. It finds the section of the statute under which the defendant is charged as being constitutionally applied as to him

1 and is consequently ready to proceed with this matter.

2 The court would ask first whether or not Mr. Chester is  
3 prepared to proceed on his prior plea of guilty and the  
4 conditional plea agreement earlier entered into by him.

5 MR. COLEMAN: Yes, Your Honor.

6 THE COURT: And I would ask further whether or not in  
7 addition to the matters that the parties are aware are before  
8 the court, starting with the presentence report, that is,  
9 whether or not you have anything to add to that, any other  
10 points to make before the court proceeds to sentencing.

11 MR. COLEMAN: No, Your Honor.

12 MS. JOHNSTON: No, Your Honor.

13 THE COURT: That being the case, I would ask,  
14 Mr. Coleman, do you see any reason why sentence should not now  
15 be imposed in this matter?

16 MR. COLEMAN: No, sir, I do not.

17 THE COURT: And do you, Mr. Chester, see any reason why  
18 sentence should not now be imposed in this case?

19 THE DEFENDANT: No, sir.

20 THE COURT: The court, first of all, notes the  
21 guidelines as they earlier existed, but also notes that the  
22 limitations that the court imposes for purposes of this hearing  
23 is the sentence at a maximum that was imposed originally as to  
24 the defendant. I take it the parties have no objection to that.

25 MS. JOHNSTON: No objection, Your Honor.

1 MR. COLEMAN: I'm sorry, Your Honor, I was trying to  
2 understand your statement, maximum imposed?

3 THE COURT: I was saying that the court regards the  
4 matter being presented to the court in such fashion that the  
5 maximum sentence to be imposed is that which was imposed --

6 MR. COLEMAN: Yes, sir.

7 THE COURT: -- before.

8 MR. COLEMAN: Yes, sir, I agree with that.

9 THE COURT: And if the parties would come before the  
10 court, please, to the bench.

11 Mr. Coleman, have you anything you wish to say in  
12 Mr. Chester's behalf?

13 MR. COLEMAN: Yes, sir. Mr. Weis had previously filed  
14 a motion about early termination of the supervised release, and  
15 there was some points in that -- excuse me, I left those  
16 notes -- that I thought were particularly significant.

17 On January 7 of 2009 when you previously sentenced  
18 Mr. Chester, you allowed him a bond for his appeal; and yet, on  
19 his own initiative, he approached the court and received a  
20 self-report date to go ahead and serve the custodial part of the  
21 sentence you had imposed. That started on April 24 of '09, and  
22 finished in September 15 of the same year. He successfully  
23 served the five months after that on home confinement,  
24 effectively completing the ten-month split sentence you had  
25 imposed.

1       We have a recent note Ms. DeVore prepared. Other than that,  
2       Mr. Chester on bond and after sentencing and throughout the  
3       pendency of his appeal has conducted himself not just in minimum  
4       conformity, but he has genuinely made effective changes in his  
5       life. You got to hear through the evidentiary hearings a lot of  
6       the bad things in his past. But as I see the purpose of  
7       supervised release or at least as I understand it, the custodial  
8       part of the sentence is a punishment. Supervised release is  
9       certainly, we saw that in *Gall* acknowledged as a relinquishment,  
10      a continued relinquishment of a lot of important civil rights.  
11      But as I understand the purpose of the change from parole to of  
12      supervised release, it was not to continue just the punitive  
13      aspect of the sentence, but to aid someone in transitioning and  
14      demonstrating an effective -- that they got it mentally, that  
15      they made efforts to change their life, and that they are moving  
16      toward what we want them to be, someone we don't ever have to be  
17      really concerned about coming back.

18      Mr. Chester has been candid with Ms. DeVore throughout his  
19      supervision. He was candid about earlier this month. I look at  
20      his age to explain some of the medical problems to you just in  
21      trying to get this hearing scheduled and the rest were noted in  
22      his PSR. He has paid a high price for poor judgments in the  
23      past already. Both on the advice of counsel and given the  
24      posture of the case, he has had limited contact with his family,  
25      even since the remand. He has got some grandchildren he laments

1 and regrets having little contact with because of the pendency  
2 of this matter. And I've explained to him that after this,  
3 whether he is on paper or not, that hopefully can change and he  
4 can finish enriching the rest of his life with those people who  
5 have been outside of it because he has been under criminal  
6 prosecution.

7 I ask that you impose a sentence of time served for what he  
8 has done. I would ask, when you impose supervised release, that  
9 it conform up until now. Again, we have the penal and deterrent  
10 part of this, and it's weighed against how much is sufficient  
11 but not greater than necessary, and I would submit to you upon  
12 the parsimony provision that yes, a maximum, you can reimpose  
13 what's already done, what you previously imposed because he has  
14 already done it, but I would ask that the term of supervised  
15 release be tailored to his position now and that it go ahead and  
16 terminate.

17 We have seen probation in the past year change a lot of its  
18 procedures dealing with necessarily apportioning the costs of  
19 supervision for what is necessary and the desire to focus more  
20 resources on those who need much more intensive supervision, and  
21 then a tendency at least for considering and advocating early  
22 termination for those who don't. The modification statute on  
23 supervised release does not take into consideration, as argued  
24 in prior briefings by the government, the seriousness of the  
25 offense or just punishment. They instead focus on the other

1 factors under 3553(a), which I think would point to not a  
2 neutral factor of how has he done on bond and then on supervised  
3 release, but the very definite factor of how he has done.

4 If Mr. Chester was perfect, you never would have met him.  
5 But the strides he has made for him and where he has come from,  
6 we have seen the criminal justice system do what it's intended  
7 to do. It has held him accountable for conduct, and at the same  
8 time it has directed him to be somebody that we don't have to be  
9 concerned about being in our community and society.

10 So with that, I would certainly ask that you impose less  
11 supervised release. Certainly, there's no room for any further  
12 imprisonment. His bond -- excuse me, his supervised release  
13 behavior, coupled in with the factors Mr. Weis originally  
14 argued, could support a variance for probation. You'd  
15 originally denied that. You may still feel that way. But even  
16 if you do, again, I see the only remaining variable in this is  
17 really how much more supervision should be imposed in this and  
18 how long should he be left to be completely free of any  
19 restrictions on his civil rights.

20 So, again, I ask that you impose a shorter term up until  
21 now.

22 THE COURT: Thank you.

23 Ms. Johnston?

24 MS. JOHNSTON: Your Honor, the United States agrees  
25 with Mr. Coleman with regard to the sentence that would be

1 imposed. I anticipated that it would be for the time served.  
2 However, as the court knows, when Mr. Weis filed a motion for  
3 early termination of supervised release several months ago, the  
4 United States opposed that, and I wrote not a lengthy memo, but  
5 it was, you know, it was several pages long stating the reasons  
6 why the supervised release should not be terminated early. Your  
7 Honor, that was prior to him testing positive recently for  
8 marijuana.

9 So, in light of his most recent test, the United States  
10 clearly disagrees with Mr. Coleman in this case and believes  
11 that he should remain on supervised release. It's my  
12 understanding, after talking with Ms. Loftis this morning, I  
13 think that he will actually be off of paper I think it's  
14 September 14th of this year. So, in light of that, Your Honor,  
15 the government clearly believes that this defendant should  
16 remain on supervised release.

17 THE COURT: Thank you.

18 And in light of the government's comments, anything further,  
19 Mr. Coleman?

20 MR. COLEMAN: Only that we've got one slip in multiple  
21 years. And his original problem, his most crucial problem was  
22 alcohol. And if you look at the PSR, his admitted polysubstance  
23 abuse and alcohol abuse was daily for almost thirty years. For  
24 him to have made the adjustment he made after his arrest in 2008  
25 forward, I don't think six more months on paper, it's almost too



1 big a stick for a weak slip that he admitted, was accountable  
2 for, and didn't try and mince words with and explain what  
3 happened to Ms. DeVore. So, I would hope there would be some  
4 credit for that.

5 THE COURT: Thank you.

6 And, Mr. Chester, have you anything further you wish to say  
7 in your own behalf?

8 THE DEFENDANT: Well, Your Honor, again, I would like  
9 to apologize to the court, and I've taken up your time and  
10 wasted the court -- you know, it's cost a lot of money and  
11 things like that. And I've been going through this since '07,  
12 and whatever you do is fine with me. I mean, I know I slipped,  
13 but, you know, I have a lot of medical problems, and all through  
14 it, no pain medication or nothing. So I have back problems. I  
15 have had a heart attack. I have cataracts and diabetes and a  
16 little bit of everything, so. But, you know, I've been standing  
17 here, like it hurts to stand here now, but I'm here in front of  
18 you, and if you can give me leniency, I would appreciate it, but  
19 I know I messed up. So whatever you do, I'll accept.

20 THE COURT: Thank you, Mr. Chester.

21 Mr. Chester, the court has considered again the presentence  
22 report in the case and is aware of those circumstances that have  
23 been made available to the court during the course of our  
24 hearings and the like regarding your conduct during the course  
25 of this case. In once again considering all those factors under

1 Section 3553(a), the court is satisfied that the appropriate  
2 sentence in the case is the same as that which the court entered  
3 heretofore.

4 And so, the court sentences you to the term of imprisonment  
5 of five months which you have already served, sentences you to a  
6 term of supervised release of three years, and as a component of  
7 that, five months of home confinement. The home confinement  
8 you've already served. The court notes with respect to the term  
9 of supervised release, that you have served on supervised  
10 release from September 15th, 2009, until March 8, 2011,  
11 supervised release to that point until the mandate was issued by  
12 the Court of Appeals which vacated and remanded the case for the  
13 court's further consideration, as you know. And so, you had  
14 served nearly a year and a half on supervised release by that  
15 time. And the reality is, according to the probation officer,  
16 Ms. Devore, you have been treated as though you have been on  
17 supervised release ever since. And that means that for the past  
18 eleven months since the Fourth Circuit mandate, you continued to  
19 be treated as though you were on supervised release. And so,  
20 the court understands that and expects to give you credit for  
21 that period of time.

22 The court has left then and you have left a limited amount  
23 of time on supervised release yet to serve. It will be subject  
24 to the same terms and conditions that are standard by standing  
25 order in this district. And the court recognizes, as well, that

1 there has been filed a motion for early termination, the  
2 government has responded to that, and the court will take that  
3 into account on another occasion.

4 But at this time the court sentences you, in effect, to the  
5 same sentence that you received heretofore. And I would note,  
6 of course, that there is no fine and the special assessment has  
7 already been paid.

8 And so, with that, I would ask the parties whether or not  
9 you have anything further.

10 THE DEFENDANT: Do I have anything further?

11 THE COURT: Yes. First, Mr. Coleman.

12 MR. COLEMAN: No, sir.

13 THE DEFENDANT: Sorry.

14 THE COURT: And Ms. Johnston?

15 MS. JOHNSTON: No, Your Honor.

16 THE COURT: And do you have anything further either,  
17 Mr. Chester?

18 THE DEFENDANT: No, sir. I'm sorry.

19 THE COURT: I didn't know if you had anything further  
20 possibly to say.

21 THE DEFENDANT: I'm not used to court proceedings.

22 THE COURT: Very good.

23 The court informs you that you have fourteen days from this  
24 date within which to appeal your resentencing; and if, as the  
25 court understands may be the case, you are without funds with

1 which to prosecute that appeal, then should you request and  
2 qualify, the court would appoint counsel for you at the expense  
3 of the United States, and the costs of that appeal would  
4 otherwise be at the expense of the United States as well.

5 With that, the court will note to the parties that it  
6 expects to shortly consider again and anew the motion for early  
7 termination that was filed last August, and will inform the  
8 parties of its action. I would simply ask whether or not on the  
9 matter of early termination, the parties have anything further.

10 MR. COLEMAN: Only to point out my perception of the  
11 government's brief where the argument essentially that his  
12 performance on supervised release is a neutral factor or  
13 something that doesn't weigh, and that the interests of justice  
14 in the 3583(e) somehow equates to consideration of everything  
15 under 3553(a)(2)(A), and I would simply remind the court that  
16 those considerations are expressly excluded from 3583(e). And  
17 with the exclusion of that and not allowing those considerations  
18 to be back-doored under some vague interests of justice general  
19 language, that the original points made by Mr. Weis I think are  
20 still applicable, and taking the parsimony provision that I hope  
21 you will entertain and grant the motion.

22 THE COURT: Thank you.

23 Ms. Johnston?

24 MS. JOHNSTON: Your Honor, we will rely on the  
25 memorandum that we filed, and hopefully, and I know the court

1 will take into consideration the memorandum opinion that was  
2 entered in this court regarding defendants like Mr. Chester who  
3 have a background of committing domestic violence and  
4 considering whether or not he should be released early with  
5 regard to supervised release.

6 THE COURT: Thank you.

7 Anything further, Mr. Coleman?

8 MR. COLEMAN: And I'm saying this in lieu of the  
9 subsequent submission to the court because I know Your Honor is  
10 well-aware of the issues presented by the motion. The  
11 government's argument, at least as I've read it, if the basis  
12 for denying early termination is because you are a domestic  
13 violence misdemeanor, then we never get early termination in a  
14 922(g)(9) case, not because of how they performed on supervised  
15 release and whether their conduct furthers the purpose of  
16 supervised release, but simply because of their status, they are  
17 never entitled to that remedy. I don't think that's what  
18 Congress intended with the scheme in terms of the graduated  
19 punishments and I don't think it's consistent with the express  
20 language of the statute.

21 THE COURT: Thank you.

22 The court takes all that under advisement, and I will simply  
23 note to you, Mr. Chester, regardless of what the court does on  
24 early termination, you are getting pretty close to the end of  
25 this, and I know that it's been a long road and I believe that

1 it turns out that it was prudent of you to do as you did and go  
2 ahead and try to get as much of this behind you as you possibly  
3 could, and you are very near the end of being tied up in this  
4 court at all. And with that, the court wishes you good luck.

5 THE DEFENDANT: Thank you.

6 MS. JOHNSTON: Thank you.

7 MR. COLEMAN: Thank you.

8 (At 8:56 a.m. the hearing was concluded.)

9 --oOo--

10 REPORTER'S CERTIFICATE

11 I, Barbara Steinke, Registered Merit Reporter, do hereby  
12 certify that the foregoing proceedings were reduced to writing  
13 by me at the time and place therein mentioned, and said  
14 proceedings are a true and accurate transcript from my notes.  
15 Quoted material in this transcript is verbatim and may/may not  
16 reflect a direct quote. I further certify that I am neither  
17 related to any of the parties by blood or marriage, nor do I  
18 have any interest in the outcome of the above matter.

19 March 19, 2012

20 s/Barbara Steinke  
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